

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Acceleration of Broadband Deployment:	)	
Expanding the Reach and Reducing the Cost of	)	
Broadband Deployment by Improving Policies	)	WC Docket No. 11-59
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

To: The Commission

**COMMENTS OF CITY OF WICHITA, KANSAS**

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The City of Wichita, Kansas (hereinafter “City”) files these comments in response to the Comments of PCIA - The Wireless Infrastructure Association (hereinafter “PCIA”), filed July 18, 2011 in response to the Notice of Inquiry in the above-captioned matter.

In its response, PCIA complains of, “Jurisdictions that retain consultants identified by the wireless infrastructure industry as obstructionists and problematic...” (PCIA filing, Ex. B, p. 11). PCIA provided a list of such jurisdictions. The list includes “City of Witchita, Kansas.” (PCIA filing, Ex. B, p. 13). Despite the misspelling of the City’s name, the assumption is PCIA intended to identify the city as a jurisdiction which engages what PCIA refers to as a “problematic consultant”. (PCIA filing, Ex. B, p. 11).

### **The City Does Not Use Consultants**

The City’s inclusion on a list of jurisdictions with problematic consultants is shocking, given the good relationship the City has had with the industry and, more importantly, the fact the City does not utilize a consultant.

The City does not have any consultant review, analyze or perform any public service or administrative functions in connection with an application. Despite PCIA’s claim, the City has no consultant that charges excessive fees, imposes superfluous application requirements, requires discretionary review for collocations, delays applications or reviews the process. (PCIA filing, Ex. B, p. 11).

The City contracted with a consultant in August 1999 for the limited purpose of assisting it in developing a “Wireless Communication Master Plan” (hereinafter “Master Plan). The plan was developed by the Wichita Sedgwick County Metropolitan Area Planning Department with

the brief assistance of consultants Kreines and Kreines. Kreines and Kreines has received no payment from the City since 2000.

The industry was well-represented during the development of the Master Plan. Those in the market at the time were invited to participate. Those involved included AT&T, Nextel, Sprint, Voicestream (now T-Mobile), Cellular One, South Central Telecom, Connectivity Services, and Pixius. Local broadcasters KPTS, KWCH, and KSNW also participated, as did a local tower owner.

In preparation of the Wireless Communication Master Plan, community workshops were held on September 29, 1999, and October 27, 1999. An industry roundtable was held on September 30, 1999 and an industry presentation was held on October 27, 1999. Additionally, a questionnaire was sent to industry representatives and meetings were held with individual industry representatives. After a November 23, 1999 workshop with the City Council on the preliminary draft of the Master Plan, a task force was assigned to further meet with the stakeholders and prepare necessary revisions. The task force held numerous meetings and presented a revised Master Plan in a City Council workshop on April 25, 2000. The task force was instructed to present the plan to District Advisory Boards and the Metropolitan Area Planning Commission.

The District Advisory Boards reviewed the plan during their July, 2000, meetings and their response was generally favorable. At the Metropolitan Area Planning Commission meeting on June 15, 2000, several industry representatives opposed specific provisions of the plan. (MAPC minutes 6/15/00, pages 1-16). The Metropolitan Area Planning Commission deferred its decision and directed staff to work with the wireless industry representatives on the specific issues. (MAPC minutes 6/15/00, p. 16). This was done.

On July 27, 2000, the Metropolitan Planning Commission held a public hearing on the Wireless Master Plan. At the hearing, a representative from Connectivity Services expressed that it was comfortable with the plan and thanked Planning staff for their help. (MAPC minutes 7/27/00, p. 61). A representative of AT&T Wireless Services spoke in favor of the Master Plan. In recognition of the competing interests of the neighborhood and the industry, he said, “We worked hard, we tried to get as much changed as possible, but AT&T’s position is that this represents a compromise, it represents a good compromise.” (MAPC minutes 7/27/00, p. 64). No broadband or wireless services provider spoke in opposition to the Master Plan. (MAPC minutes 7/27/00).

The Wireless Communication Master Plan was submitted to the City Council of the City of Wichita on August 22, 2000. At that meeting, representatives of AT&T Wireless, Sprint and Southwestern Bell Wireless spoke in favor of the Master Plan. There was no industry opposition to the Master Plan. The only opposition was one private citizen who opposed placement of towers in residential areas and specifically in the College Hill neighborhood. (City Council Proceedings Journal 171, pages 270-271). The Wireless Communication Master Plan was approved by the City Council on August 22, 2000.

In 2007, there were some amendments to the ordinance. There were no objections by any of the stakeholders. At that time, T-Mobile wrote a letter supporting the amendments; it also praised the Planning Department staff for its work and for seeking input from the industry. (Attachment A, Ann Brooks’ correspondence to John Schlegel).

In 2011, the Wireless Communication Master Plan was amended in response to several requests for lattice towers shorter than 150 feet in height. The 2000 Master Plan indicated that monopoles should be approved for towers less than 150 feet. Applicants, however, asserted that

the sway and twist capabilities of a lattice tower was superior to that of a monopole and a lattice tower was necessary to avoid data loss in microwave-based point-to-point data communication systems. As a consequence, the Master Plan was revised to expand the situations in which a shorter lattice tower was acceptable. (City Council Proceedings, April 5, 2011, p. 9). There was no opposition to amending the Wireless Communication Master Plan from anyone at either the March 10, 2011, meeting of the Metropolitan Area Planning Commission (MAPC minutes 3/10/11, pgs. 24-27) or the April 5, 2011, City Council meeting.

The City did not engage or contact any consultant in the preparation of the 2007 ordinance amendments or the 2011 update of the Master Plan.

The Master Plan meets the needs of the community. It includes consideration of tornadoes and high winds which can threaten structures in Wichita. Consequently, the wind load designs are to comply with the local building code or EIA-TIA 22.

The Master Plan permits the use of the City's right-of-ways for installing wireless communication facilities. (City's Master Plan, March 2011, p. 21). The right to locate such facilities in right-of-ways is also set forth in the Kansas Statutes, K.S.A. 17-1902. The state statute requires that access to right-of-ways be competitively neutral, non-discriminatory, and not unreasonable. K.S.A. 17-1902(d).

Right-of-ways are a limited resource and need to be managed carefully. The City has given non-exclusive access to right-of-ways to numerous businesses, including cable services, gas, waste water and electrical utilities, as well as computer data lines, and telecommunications. It is necessary for the City to manage access to right-of-ways to ensure equitable access, to obtain the most efficient use of the space, and to protect the City's own need for access to the right-of-ways. The City itself uses its underground right-of-ways for its water utility, storm

water utility and sanitation sewer utilities; for safety reasons the state requires a minimum of ten feet separating the potable water lines from the sanitation and storm water utilities lines. The City also uses the right-of ways for communication lines, traffic signalization, and street lights. The right-of-ways must also be protected for City's future public improvements, such as widening of streets, landscaping, and sidewalks, and for future advancements that are not yet developed or contemplated.

There is a cost associated with locating facilities in the City's right-of-ways. Access is permitted by a franchise ordinance. The City collects franchise fees pursuant to its franchise ordinance. K.S.A. 17-1902(d), (s). The Kansas Constitution requires that the City obtain "full compensation" before permitting a corporation access to a right-of-way, "irrespective of any benefit from any improvement proposed by such corporation." Kan. Const. Art. 12, §4. In furtherance of the Constitutional requirement, Kansas statutes also prohibit use of the right-of-way, unless the City is provided "adequate compensation or consideration." K.S.A. 12-2001(b)(5). In the case of telecommunications franchises, by statute, the City has the option of imposing a fee of 5% of the gross revenue or \$2.50 per access line per month. K.S.A. 12-2001(j). The City does not have the option of permitting access to the public right-of-way without charging a fee.

PCIA's filing which identified the City as utilizing a "problematic consultant" who performs administrative and public services function is wrong. A consultant was used exclusively to assist in preparation of the original Master Plan and it has received no payment from the City since 2000. No consultant is retained or employed by the City for any purpose related to an application. Nor does the City require the applicant to use any consultant.

## **The City's Application Process Is Not Burdensome**

Neither application nor deployment is burdensome at the City. The Wireless Communication Master Plan is readily available on the City's website. The two-page application is accompanied by a set of instructions and a checklist. (Attachment B).

The City's Master Plan sets forth a simple, well-developed process. Most wireless communication facilities are approved by securing Building Permits. Since the adoption of the Master Plan in July, 2000, the City has issued two hundred and one (201) Building Permits for commercial and private communication towers. Conditional Use Permits may be issued in those situations where towers are not clearly authorized by the Master Plan. Since 2000, forty-three (43) Conditional Use Permits have been issued and only eight (8) have been denied. Thirty-one (31) Administrative Permits were granted and only one was denied. Overall, of the two hundred eight-four (284) applications received by the City since the Master Plan was adopted, two hundred seventy-five (275) have been approved and nine (9) have been denied. The approval rate is 96.8%, with a vast majority being processed with a simple building permit in accordance with the Master Plan.

Although PCIA has unjustly criticized the City, in reality, the City's process is actually consistent with PCIA's ideal. It praised the jurisdictions which require only a building permit for collocation. (PCIA filing, p. 26). In the City, collocation on existing and new facilities is encouraged in the City's Master Plan. (City's Master Plan, March 2011, p. 20-21). Collocation is a matter of only securing a common Building Permit.

The City does not require applicants to establish an escrow account to pay for the application review, as suggested by PCIA. (PCIA filing, pgs. 23-24). The City does not require any escrow account, only flat, clearly identified fees.

The Master Plan process has been effective. According to the broadband map, 99.9% of the population of the City have wireless access and 67.9% have access to seven or more providers. ([www.broadbandmap.gov](http://www.broadbandmap.gov), Wichita MSA) This exceeds access on a national level. (Id.)

## **CONCLUSION**

Contrary to the statement of PCIA, the City does not utilize any consultants in any part of the application process. Rather, after full involvement of the industry providers, the City developed a Master Plan that has been embraced by both the community and industry. Identifying the City as a community with a problematic consultant is flat wrong. The City urges the Commission to not be misled.

For the foregoing reasons and those given by the National League of Cities, et al, the City urges the Commission to permit the City to manage its own right-of-ways and permit the development of the wireless communications in accordance with the community's well thought out Master Plan.

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